

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3878

STATE OF NEW JERSEY

DATED: JANUARY 9, 2020

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 3878.

This substitute would expand the scope of the “Law Against Discrimination” (LAD), P.L.1945, c.169 (C.10:5-1 et seq.), to incorporate protection against discriminatory acts against a person based upon the traits of that person’s family members, provide for State-initiated administrative investigations and State-initiated actions in Superior Court concerning discriminatory practices, as well as expand the remedies against and penalties for violations of the LAD.

Concerning discrimination on the basis of a person’s family members, the bill would bar discrimination against a person by reason of a family member’s race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, liability for service in the Armed Forces, disability, or nationality. “Family member” is defined as “a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, partner in a civil union couple, domestic partner, or any other individual related by blood to the person, and any other individual that the person shows to have a close association with the person which is the equivalent of a family relationship.” This expands the scope of the LAD, which currently bars discrimination only concerning the traits of a person’s spouse.

The bill would permit the Attorney General or Director of the Division on Civil Rights to initiate an investigation when it appears to either that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by the LAD or the “New Jersey Civil Rights Act,” P.L.2004, c.143 (C.10:6-1 et seq.). An investigation could also be initiated when either believes it to be in the public interest to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any discriminatory practice. The investigatory powers set forth in section 8 of P.L.1945, c.169 (C.10:5-8), including the power to subpoena witnesses and records, could be used to conduct any investigation.

Also, whenever it appears to the Attorney General or the director that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by the LAD, either may proceed

against the person in a summary manner in the Superior Court to obtain an injunction prohibiting the continuation of such practice.

In addition to initiating investigations or obtaining injunctions, the Attorney General and the director, as well as the Commissioner of Labor and Workforce Development and Commissioner of Education could initiate lawsuits in Superior Court to address discriminatory practices. Currently, these State officers are permitted to initiate the filing of a complaint with the Division on Civil Rights for review and action.

Among the State-initiated lawsuits that could be filed in Superior Court would be those alleging unlawful discrimination by a municipality, county, or other local civil or political subdivision, or officer, employee, or agent thereof, through promulgation, application, or enforcement of their land use or housing regulations. At present, the LAD only provides for private causes of action by an aggrieved person for such discrimination. See P.L.1992, c.146, s.12 (C.10:5-12.5).

In addition, the bill would permit the Attorney General or the director to initiate an enforcement action in the Office of Administrative Law, other than for the aforementioned land use or housing regulation discrimination, which is limited to action in the Superior Court.

Regarding actions filed in Superior Court, if the Attorney General or director is a prevailing plaintiff, all common law tort remedies would be available on behalf of any named and unnamed victims of discrimination, and each is also provided with the authority to settle suits on behalf of such victims on terms they deem appropriate. Additionally, each may seek and obtain through the Superior Court the monetary penalties currently assessed by the director in an administrative proceeding pursuant to section 2 of P.L.1983, c.412 (C.10:5-14.1a), or, in lieu of such penalties, punitive damages payable to the State pursuant to the "Punitive Damages Act," P.L.1992, c.142 (C.2A:15-5.9 et al.).

The bill also makes the award of attorney's fees, litigation costs, and investigation costs mandatory in Superior Court actions if the Attorney General or the director is the prevailing plaintiff. For other prevailing parties, an award of attorney's fees remains optional. See P.L.1979, c.404, s.6 (C.10:5-27.1).

Finally, any prevailing plaintiff in a Superior Court action may seek and obtain the same form or forms of injunctive relief that the director may award, pursuant to section 16 of P.L.1945, c.169 (C.10:5-17), after making a finding in an administrative proceeding that a party engaged in unlawful discrimination.